IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1065 of 2006

GOPIKISHAN
V/S
PANNA LAL & ORS.

Mr. NS ACHARYA, for the appellant / petitioner

Mr. PRABHAT OJHA, for the respondent

Date of Order : 6.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

It is contended by learned counsel for the respondent that earlier suit was filed on behalf of the plaintiff for partition with respect to certain properties, wherein the property in question was not included. Thereupon the present defendant raised specific objection in the written-statement that since the suit is not filed for partition of all the properties, therefore, suit is not maintainable, and while taking this plea, specific details of property in question were also given. To that, a rejoinder was also filed, but then nothing was said about it. Then issues were also framed in that suit. In that view of the matter, despite pendency of that suit, after the tenant in the property had vacated, and the entire property was requiring reconstruction, the defendant demolished the entire construction, and undertook excavation for

construction of basement, and thereafter, started raising construction, at that stage, the present suit has been filed, and injunction has ben prayed for, wherein injunction has been refused by the learned trial Court. Giving these facts, it was also contended by learned counsel for the respondent that in case the plaintiff succeeds in the suit, he will not claim any compensation for the cost of construction being incurred by him.

The above factual averments could not be successfully controverted by the learned counsel for the petitioner.

I do not find any sufficient ground to grant any interim stay, or to continue the interim stay granted on 4.8.2006. Interim stay is, therefore, vacated, and the stay application is dismissed. Learned trial Court is, however, directed to proceed with the trial of the suit most expeditiously.

In view of the above findings, both the learned counsel for the parties submit that the appeal itself may be disposed of as above. Accordingly, the appeal is disposed of.

(N P GUPTA),J.

/tarun/